IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : August 28,2006

Ram Kishan and others

....Appellants

Versus

The State of Haryana

....Respondent

Coram: **Hon'ble Mr. Justice Virender Singh**
Hon'ble Mr. Justice A.N. Jindal

Present : Ms. Baljeet Mann and Mr. Vinod Ghai, Advocates, for convicted appellants and acquitted respondents.

Mr. Sunil Katyal, Deputy Advocate General, Haryana.

None for Tejbir Singh petitioner in the Crl. Revision No.632 of 2002.

Virender Singh, J.

Vide this judgment judgment we are disposing of Criminal Appeal No.636-DB of 2001 titled “Ram Kishan and others vs. State of Haryana”, Criminal Appeal No.674-DBA of 2002 titled “State of Haryana vs. Meshri and others” and Criminal Revision

No.632 of 2002 titled "Tejbir Singh vs. Meshri and others".

Vide impugned judgment of learned Additional Sessions Judge, Panipat dated 31st October, 2001, Ram Kishan son of Nihala, his real brother Hawa Singh and Suresh son of Ram Kishan (Appellants in Crl. Appeal No.636-DB) have suffered conviction for the offences punishable under Sections 302, 323 and 325 read with Section 149 IPC. They have also been held liable under Section 148 IPC and sentenced as under:-

Under Section 302 read with S. 149 of Indian Penal Code:

All the three convicts are sentenced to undergo life imprisonment and to pay a fine of Rs.2000/- each and in default of payment of fine, the defaulting convict shall further undergo rigorous imprisonment for a period of three months.

Under Section 325 read with Section 149 of Indian Penal Code:

All the three convicts are sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.500/- and in default of payment of fine, the defaulting convicts shall further undergo R.I. For one month.

Offence under Section 323 read with S. 149 Indian Penal Code:

All the three convicts are sentenced to undergo rigorous imprisonment for three months.

Offence under S. 148 of Indian Penal Code:

All the three convicts are sentenced to undergo rigorous

imprisonment for a period of six months.

All the sentences have been ordered to run concurrently.

Aggrieved by the judgment of conviction and sentence, they have preferred Criminal Appeal No.636-DB of 2001.

Since Meshri, Roshni and Sheela have been acquitted by the trial Court, State of Haryana has preferred Criminal Appeal No.674-DBA).

The said appeal stands admitted vide order dated September 12, 2002.

Tejbir Singh (complainant/FIR lodger) has also filed Criminal Revision (632 of 2002) against the acquittal of Meshri and two others and has also claimed compensation under Section 357 Cr.P.C. which also stands admitted vide order dated July 23, 2002 and was ordered to be heard along with Criminal Appeal No.636-DB of 2002.

It is pertinent to mention here that Vijender Singh @ Billu son of Ram Kishan (appellant) was also challaned. However, he was held to be juvenile and, therefore, his case was segregated and sent to the Juvenile Court at Ambala.

As indicated in the charge sheet, all the six accused were charged under Section 148 IPC. Ram Kishan and Suresh appellants have been charged substantively for the offence punishable under Section 302 IPC whereas Hawa Singh appellant and Roshni, Meshri

and Sheela (since acquitted) were charged under Section 302 read with Section 149 IPC. Hawa Singh, Suresh, Ram Kishan, Roshni and Meshri were charged under Section 323 IPC and 325 IPC substantively. Roshni, Meshri and Sheela were also charged under Section 323 read with Section 149 IPC. Meshri was, however, charged substantively for Section 323 IPC also. Roshni was also charged under Section 325/323 read with Section 149 IPC alongwith Vijender Singh (sent to Juvenile Court).

Deceased in this case is Dharma @ Dharam Singh who was real brother of Ram Kishan and Hawa Singh appellants and uncle of Suresh appellant.

The occurrence dates back to 26th July, 1992 at about 8/9 A.M. near the field of Ram Kishan. In this occurrence, both the sides have received injuries. The complainant side went to Civil Hospital Safidon for treatment whereas the injured from the appellants side came to Panipat Hospital. Although the distance from the place of occurrence to Civil Hospital, Safidon and to General Hospital, Panipat has not come on the judicial file but learned counsel for both the sides state that it is almost the same with a difference of 5/7 kilometers. Statement Ex.PS of Tejbir Singh (PW5) son of Dharma, since deceased, was recorded in Civil Hospital, Safidon on the date of occurrence itself i.e. 26th July, 1992 at 2.30 P.M. by Head Constable Ram Kumar PW9 of Police Station Urlana. On the endorsement of

aforesaid Head Constable Ram Kumar Ex.PS/1, formal FIR Ex.PS/2 was registered in Police Station Urlana (District Panipat) at 3.10 P.M. The case was initially registered under Sections 148/149/324/307 IPC. On the same day Dharma died at about 2.45 P.M. as is indicated in intimation Ex.PA/4 sent by Dr. R.K. Khandpur PW1 Medical Officer of Civil Hospital, Safidon. Section 302 IPC was consequently added. The special report reached Judicial Magistrate Ist Class, Panipat at 10.00 P.M. on the same day. The case of the complainant as emerging from the statement of Tejbir Singh PW5 is that his father Dharma, since deceased, had two brothers, namely, Ram Kishan and Hawa Singh (appellants herein). During his life time, the grand father of Tejbir Singh had partitioned the land amongst his three sons viz Dharma, since deceased, Ram Kishan and Hawa Singh. However, Ram Kishan and Hawa Singh were illegally occupying some land of his father. In order to resolve the dispute, Panchayats were convened many a time but to no effect. It is then alleged that on 25.7.1992 at about 8/9 A.M. when he (Tejbir), his wife Krishna and brother Ami Singh were going in a Buggi to fetch grass from the fields known as Dummoa Wala, appellant Ram Kishan, his sons Suresh (appellant) and Vijender (Juvenile) had stopped their Buggi with the help of a tractor and threatened them with injuries in case they move forward to bring grass from the fields. It is then the case of the complainant that he and his

companions went back and narrated the entire incident to their father Dharma who went to one Tara Master and told him the entire episode. Tara Master had assured Dharma that he would reprimand Ram Kishan. It is then the case of the prosecution that on 26.7.92 at about 8/9 A.M., Tejbir, his brother Ranbir, Ami Singh, his wife Krishna and father Dharma were going in the Buggi to bring grass from the same field and when they reached near the field of Ram Kishan, all the accused persons armed with Farsa, Gandasi and Lathi came out of their field. Ram Kishan appellant raised Lalkara that nobody should be spared and thereafter Ram Kishan and Suresh gave one Lathi blow each on the head of Dharma. Vijender Singh accused gave Lathi blow hitting left eye of Dharma as a result of which Dharma had fallen down from the Buggi. When Tejbir and his brother Ranbir had bent down to pick up Dharma, then Roshni accused (since acquitted) gave a Gandasi blow hitting complainant on his left hip. Hawa Singh appellant, who was armed with a Gandasi, gave the blow from the blunt side to Ami Singh. Meshri accused (since acquitted) was also having a Gandasi and she gave one blow from its blunt side to Ranbir and thereafter all the seven accused persons taking for granted the complainant and his companions to be dead, left the place. Dharma was taken to Civil Hospital, Safidon where he was declared to be dead.

After recording of the formal FIR, investigation of this

case was initially conducted by ASI Mohinder Lal PW10, who after receipt of the ruqa Ex.PS from Head Constable Ram Kumar, got the formal FIR recorded. Thereafter when he was present at Civil Hospital, Safidon, aforesaid Head Constable Ram Kumar met him outside the hospital and apprised him of the death of Dharma. Thereafter inquest proceedings were conducted by him and the dead-body was sent for postmortem along with inquest report Ex.PG/5. SI/SHO Baljit Singh of Police Station Urlana (PW11) reached the spot and recorded the statements of injured accused who were admitted in Civil Hospital, Panipat. He thereafter came to Panipat where he was told that postmortem was to be conducted in Civil Hospital, Jind. Therefore, the dead-body of Dharma was accordingly sent to Civil Hospital, Jind. ASI Mohinder Lal then approached the concerned doctor for recording the statement of the accused/injured where he was informed that Ram Kishan (appellant) and Roshni (since acquitted) were referred to Medical College and Hospital, Rohtak and the other three injured from the side of the appellant had been discharged after necessary medical treatment. ASI Mohinder Lal then recorded the statements of the injured from the side of the complainant.

Investigation of the present case was then taken over by SI Baljit Singh who visited the spot, prepared the rough site plan Ex.PV on the pointing of Krishna wife of Tejbir Singh, took into

possession the clothes of the deceased after the postmortem examination and thereafter recorded the statements of certain police officials. On 2nd August, 1992, when he was in village Seenkh, Vijender, Hawa Singh, Meshri and Suresh were produced by Sarpanch Karamvir. They were formally arrested. Hawa Singh, Vijender, Suresh and Meshri were interrogated and during interrogation they made their separate disclosure statements pursuant to which Hawa Singh got Gandasi Ex.P4, Meshri Gandasi Ex.P5, Vijender Lathi Ex.P6 and Suresh lathi Ex.P7 recovered. All the weapons of offence were then taken into possession vide separate memos. On 5.8.1992 appellant Ram Kishan was formally arrested and he produced a Lathi which was taken into possession. On 11.8.1992 Sheela and Roshni were produced by Rambhaj. They were also formally arrested. Pursuant to the disclosure statement of Roshni, she got a Gandasi Ex.P8 recovered which was taken into possession. However, no recovery is effected from Sheela.

On the completion of the investigation, all the accused were challaned and consequently charged for offences as depicted above.

Since both the sides are injured in this case, we feel it appropriate to describe the injuries of both the sides and the same are thus:

Injured from the side of complainant:

Five persons have received injuries from the side of the complainant including Dharma, since deceased, who was initially examined by Dr. R.K. Khandpur, Medical Officer of Civil Hospital, Safidon. He noticed the following injuries on the person of Dharma:-

1. A lacerated wound 4 cm x 1 cm, scalp deep, present on the left side of parietal region. Fresh blood was oozing out of the wound. Hair were metted with clotted blood. X-ray skull was advised.
2. Upper eye lid of left eye was diffusedly swollen and eye could not be opened and examined.
3. First left tooth upper jaw was missing. Socket was full of blood clot and blood was present in the socket and in the mouth cavity and respiration was gasping type. Upper lip in the central part of upper lip was swollen slightly.

All the injuries were caused by blunt weapon.

Injuries on the person of Tejbir son of Dharma (PW1) are as under:-

1. There was a lacerated wound 4.5 cm x 1/2 cm size irregular shape, skin deep present on the left parietal region. Fresh blood was oozing out of the wound. Hair were metted with clotted blood. X-ray of the skull, AP and lateral view was advised.

2. There was a lacerated wound 2.5 cm x 1/2 cm size irregular shape present on left parietal region. It was scalp deep. Fresh blood was oozing out of the wound. Hair were metted with clotted blood. X-ray of the skull, AP and lateral view was advised.

3. There was a diffused swelling of left elbow joint, posterior, part of lateral and medial part. Tenderness was present. Movements at joint were restricted. X-ray of the left elbow joint was advised.

4. There was an incised wound 2.5 cm x 1 cm, skin deep present on left iliac crest anteriorly on left side. Fresh blood was oozing out of the wound. Clotted blood around the wound was present.

5. There was an abrasion of 2 cm x 1/2 cm size irregular shape present on posterior aspect of middle of left fore-arm. Crest of clotted blood was present over it.

6. There was two reddish contusions of 4 cm x 2 cm and 2cm x 2cm size irregular shape present on left shoulder joint.

7. There was a reddish contusion of 4 cm x 2½ cm size irregular shape on lateral aspect of middle of left upper arm.

8. There was an abrasion of 5 cm x 1 cm size verticle

placed on posterior aspect of upper half of right fore-arm crest of clotted blood was present over it.

9. There was an abrasion of 1½ cm x 1 cm irregular shape on anterio medial aspect of right fore-arm crest of blood was present over it.

10. There were two abrasions of 1 cm x 1/2 cm size and 3 cm x 1 cm size irregular shape present on anterior aspect of right thigh in the middle part.

All the injuries were kept under observation and as per the opinion of the doctor the weapon used for injury No.4 was sharp edged whereas for rest of the injuries it was blunt. Ultimately on radiological examination of injury No.3 it which was a diffused swelling on left elbow joint, it was declared grievous.

On the person of Ami Singh (PW6) son of Dharma, the following injuries were noticed:-

1. A lacerated wound 3 c m x 1 cm size scalp deep present in the middle of head. Fresh blood was oozing out of the wound. Hair matted with blood. Tenderness was present. X-ray skull was advised.

2. There was a lacerated wound 1/2 cm x 1/2 cm size irregular shape present on dorsal aspect of base of middle finger of left hand. It was skin deep. Fresh blood was oozing out of it. Clotted blood around it was present.

3. There was tenderness on anterior lateral aspect of middle of left thigh. No swelling, no external injury was present.
4. A reddish contusion of 6 cm x 2 cm size obliquely placed was present on upper part of back on right side.

All the injuries were caused by blunt weapon.

Ranbir another son of Dharma (not examined) had received the following injuries:-

1. The thumb of left hand was swollen all around at distal IP joint. It was tender, small abrasion of 1/2 cm x 1/3 cm size irregular shape was present on the palmer aspect near the nail at tip of thumb. Crest of blood was present over it. Movements were limited somewhat at IP joint.
2. There was an abrasion of 1/2 cm x 1/4 cm irregular shape on dorsal aspect of distal 1/2 of first finger of left hand. Crest of clotted blood was present over it.
3. There was a diffused swelling of 4 cm x 2½ cm size irregular shape present on the right side of parietal region. It was tender. X-ray skull AP lateral view was advised.
4. He was complaining of pain on anterio lateral middle part of right thigh. No swelling, slight tender of area was present.

5. There was a diffused swelling of 3 cm x 2 cm size irregular shape present on lateral aspect of lower half of right fore-arm. It was slightly tender.

All the injuries were declared simple in nature caused by a blunt weapon.

Krishna wife of Tejbir (PW) had received the following injuries:-

1. There was diffused swelling of 3 cm x 3 cm size irregular shape on left parietal region. It was tender. X-ray skull was advised, AP and lateral view.
2. There was diffused swelling of 2 cm x 2 cm size irregular shape present on occipital region. It was tender. X-Ray skull AP lateral view was advised.
3. There was a reddish contusion of 3 cm x 2 cm size irregular shape present on the right shoulder joint. It was tender. Movements at shoulder joint were somewhat limited.
4. There was a diffused swelling of 1 cm x 1 cm size irregular shape present on dorsal and lateral aspect of base of thumb of left hand. Tenderness was present.
5. A superficial abrasion of 4 cm x 1cm size irregular shape present on posterior aspect of middle part of right fore-arm.

Her injuries were also declared simple caused by a blunt weapon.

Injuries from the side of the appellants:

Six persons from the side of the accused-appellants have received injuries in this occurrence and they were examined by PW4 Dr. V.P. Gupta, Medical Officer, General Hospital, Panipat. He noticed the following injuries on the person of Roshni (since acquitted):-

1. There was a stab wound 1cm x 0.5 cm over the right side of abdomen. It was transversely placed. It was 12 cm on the right side from the umblicus. Margins of the wounds were lacerated. Clotted blood was present. Depth and direction was to be given by the Surgeon. X-ray was advised.
2. A lacerated wound 0.75 cm x 0.5 cm longitudely placed on the posterior aspect of right fore-arm. It is 4 cm below the olecronon process. It was bone deep. Clotted blood was present. X-ray was advised.
3. A lacerated wound 4 cm x 0.5 cm over the skull. It was obliquely placed, bone deep. The lower end of the wound was 7 cm above the left medial end of the eye-brow. Then it went upwards the right side of skull. Clotted blood was present. X-Ray was advised.

4. A longitudinal bruise reddish in colour 12 cm x 0.5 cm over the posterior aspect of left calf. There was diffused swelling. It was painful and tender.

Injury No.1 was declared dangerous to life and the said injury was a stab wound caused by a blunt weapon. Injury No.2, which was a lacerated wound on the skull, was ultimately declared grievous.

Medical examination of Ram Kishan appellant shows the following injuries on his person:-

i) There was a punctured wound 0.25 cm x 0.25 cm over the left side of chest, 10 cm below the left sterno clavicular joint. Margins were lacerated. Clotted blood was present. Depth and direction was to be given by the Surgeon. There was another punctured wound 0.25 x 0.25 cm with lacerated margins, 2.5 cm below and 1 cm on the left side of the above punctured wound. Clotted blood was present. The distance between two punctured wound was 2.5 cm. Depth and direction of the wound was to be given by the surgeon.

ii) There was a punctured wound with lacerated margins 0.25 cm x 0.25 cm on the right side of chest, 7 cm below and 1 cm on the right lateral side from the sternal notch, clotted blood was present. Depth and direction of the

wound was to be given by the Surgeon.

iii) A punctured wound 0.25 cm x 0.25 cm on the right side of chest, 3 cm right lateral and 2 cm up from injury No.2. The distance between injuries 2 and 3 was 3.5 cm. Depth and direction was to be given by the surgeon.

iv) A lacerated wound 1 cm x 0.25 cm transversely placed over the left side of the abdomen near the costal margins. It was 2.5 cm from the mid line. It was skin deep. Clotted blood was present.

v) There was diffused swelling of left thumb . It was painful and tender – X-Ray was advised.

vi) There were two parallel abrasions, 7 cm x 0.2 cm over the antro lateral anterior aspect of left arm. It started from the deltoid tuberosity and went downward and forward. The normal distance between the two was 1 cm.

vii) A reddish bruise 10 cm x 3 cm over the antro-lateral aspect of right arm. It was obliquely placed. Lower end was 8cm above the elbow. Then it went upwards and medially. It was painful and tender.

viii) A reddish bruise 7 cm x 2.5 cm over the right lateral and antrolateral part of chest. Obliquely placed. Then it went downwards and backward. From the posterior end

of the wound there were three extensions- 5 cm x 0.1 cm, 6 cm x 0.2 cm, 5 cm x 0.5 cm. It was painful and tender.

Out of eight injuries, three injuries (injury Nos.1 to 3 respectively were caused by a blunt pointed weapon whereas for rest of the injuries blunt weapons were used. Hawa Singh appellant has received the following injuries:-

1. A lacerated wound 3 cm x 0.5 cm over the left side of skull. It was longitudinally placed. It was bone deep. The anterior end of the wound was 19 cm up and 1 cm on the left lateral side from the root of nose, Clotted blood was present. X-ray was advised.
2. There was diffused painful swelling over the posterior aspect of left wrist. X-Ray was advised.

Suresh appellant had received the following injuries by blunt weapon:-

1. A lacerated wound 1 cm x 0.5 cm longitudinally placed over the left side of chest, 2.5 cm above the nipple. Clotted blood was present. Depth and direction was to be given by the surgeon.
2. A lacerated wound 2 cm x 1 cm longitudinally placed over the left side of chest. 2.5 cm medial to injury no.1. Depth and direction was to be given by the surgeon. Clotted blood was present.

3. A lacerated wound 1.5 cm x 0.2 cm over the dorsum of terminal phalanx of left ring finger. It started from the DIP joint and went forward and laterally. It was subcutaneous tissue deep. Clotted blood was present. X-ray was advised.

4. A lacerated wound 1.5 cm x 0.2 cm over the dorum of middle of left ring finger, 1.5 cm proximal to injury No.3, it was parallel to injury no.3. Subcutaneous tissue deep. Clotted blood was present. X-ray was advised. X-Ray of chest was also advised.

Vijender (sent to Juvenile Court) has received following two injuries by blunt weapon:-

1. There was an irregular abrasion 8 cm x 1 cm over the posterior aspect of left fore-arm along the subcutaneous boarder of ulna. It was 4 cm below the olecranon process. Clotted blood was present.

2. A lacerated wound 1.5 cm x 0.75 cm over the left side of occipital protuberance, bone deep. Clotted blood was present. X-ray was advised.

Meshri (since acquitted) has also received the following two injuries:-

1. An incised wound 3.5 cm x 0.5 cm over the left arm on the medial side. It was skin deep. Clotted blood was

present. The upper end of the wound was 5 cm up from the elbow and then it went downwards, forwards and medially.

2. A reddish bruise 4 cm x 3 cm over the top of left shoulder. It was painful and tender. X-ray was advised.

The injury No.1 was caused with a sharp weapon whereas injury no.2 was caused by a blunt weapon.

Autopsy on the dead body of Dharma was conducted by Dr. Dhan Kumar, Medical Officer, Civil Hospital, Safidon on 27.7.1992 at 8.30 A.M. who noticed the following injuries on his person:-

1. A lacerated wound on the left side of scalp obliquely present of 4 x .5 cm size upto bone deep and under lying bones of the scalp were fractured. On further dissection the bones of the left side of the scalp fractured into multiple pieces with underlying brain damage. Dark red coloured haemotoma was present.
2. Black eye left side with extensive haemotoma of left upper lid was present.
3. Upper lip and lower lip were swollen with underlying teeth were shaken and damaged.
4. A lacerated wound 4 x .5 cm present on the outer aspect of left hip joint. No further damage was present on

dissection.

According to the doctor, probable duration between injury and death was within 24 hours and between death and postmortem was within 6 to 26 hours. The cause of death opined was shock and haemorrhage because of the injuries to the vital organs.

The prosecution out of four injured witnesses has examined only two injured witnesses, namely, Tejbir (PW5), the informant and Ami Singh (PW6). The other two witnesses, namely, Ranbir and Krishna have been given up as unnecessary. PW5 Tejbir Singh and PW6 Ami Singh, who are sons of the deceased, have corroborated the prosecution version as depicted in the initial statement Ex.PS which is the basis of the recording of the FIR.

We do not feel the necessity of describing the investigation conducted by the different investigating officers as the same is depicted in the preceding paras.

The prosecution has also tendered into evidence certain affidavits. Reports of the Forensic Science Laboratory Ex.PE and PE/1 were also tendered into evidence by the prosecution.

Master Tara and one other witness Bir Singh were given up by the prosecution as having been won over by the accused. Ultimately, the evidence of the prosecution was closed by the order of the Court as sufficient number of opportunities were availed of by it.

The plea taken by the accused as it emerges from the

statement of Ram Kishan appellant who had received eight injuries in the occurrence is that on the said date, Dharma, since deceased, Tejbir, Ranbir, Ami Singh and Krishna had gone to the field where he along with his family members was present. Hawa Singh appellant was working in the adjoining field along with his wife. Dharma and other persons had attacked him and caused injuries to him, his wife Roshni upon which he raised alarm. Suresh, Vijender, Hawa Singh and Meshri also came from the adjoining fields to save them. They were also attacked by the complainant party and in order to defend themselves they had also caused injuries to them (complainant party). Sheela wife of Suresh was not present at the time of occurrence. Her Muklawa had taken place only three days prior to the present occurrence and she was not going to the fields as a newly wedded usually does not go to the fields. It is then the case of Ram Kishan appellant that Dharma, since deceased, had received only one injury. After the occurrence they had gone to the hospital at Ahar and it being Sunday the doctor was not available and, therefore, they went to General Hospital, Panipat, where they were all medically examined. He and Roshni were referred to Medical College Hospital, Rohtak where they remained admitted and treated whereas the other injured were medically examined but not admitted. Roshni his wife was operated upon for the injuries received by her in her abdomen and her arm was also broken for which she remained in hospital at

Rohtak for about 16/17 days and he also remained admitted for 8/9 days. It is then the case of Ram Kishan appellant that they had given their version to the police but no action was taken against the other side (complainant party) on account of death of Dharma.

In defence DW1 Gopi Chand of Medical Record Department, PGIMS, Rohtak was produced to prove the case file of Roshni wife of Ram Kishan.

Dr. Pawan Jain DW2 had proved the X-ray examination of the abdomen of Roshni stating that on 26.7.1992 while posted as radiologist in PGIMS, Rohtak, he had taken the X-Ray of abdomen of Roshni and he found free air under the dome of both diaphragm. His report is Ex.DD. He also found fracture of left elbow (ulna bone) on the person of Roshni and in this regard his report is exhibited as DE. X-ray films were exhibited as DD/1 to DD/3. Dr. Kulwinder Singh Behl DW3, who while posted in PGIMS, Rohtak as Registrar in the Department of Surgery, had operated upon Roshni for abdominal injury and found as under:-

> "There was perforation of diameter of 1 cm in the anterior wall of stomach, approximately 5 cm from greater curvature. The peritoneal cavity was containing slightly turbid fluid. The perforation was found in the stomach and was sealed in two layers using the cat gut and the silk thread. The Omentography was done."

According to the evidence of this witness injured Roshni remained admitted in his Hospital from 27.7.1992 to 8.8.1992 and the injury was declared dangerous to life. DF was exhibited as central reservation number relating to the patient whereas DF/1 is exhibited as operational notes.

We have heard Ms. Baljit Mann and Mr. Vipin Ghai, learned counsel for convicted appellants and acquitted respondents and Mr. Sunil Katyal, learned Deputy Advocate General Haryana. However, no one has turned up to render assistance to this Court on behalf of Tejbir Singh petitioner in Criminal Revision. With the assistance of the learned counsel for both the sides, we have gone through the paper-book and the trial court records very minutely.

Learned counsel for the appellants contend that the complainant side is suppressing the genesis of the fight and have not put forth the true facts and it is a very vital flaw to discard the case of the prosecution in its totality. Dwelling upon their arguments, learned counsel submit that the prosecution has introduced a patently false story regarding motive showing that the appellants side was in possession of excess land. It has come in cross-examination of the two main prosecution witnesses, namely, Ami Singh and Tejbir Singh, that both the parties were in settled possession of their land for

at least more than two decades. Strengthening their arguments it is then submitted that in the flash back of the aforesaid established facts, the motive, if any, was in the bosom of the complainant party who were harbouring grudge with regard to their land. It is then submitted that Tara Master who, according to the complainant side, was a prominent figure in the village, has not been examined and has been given up by the prosecution as having been won over. So is the position of Bir Singh. This shows that the complainant side is not in a position to conclusively prove the motive qua the appellants side and, therefore, it cannot claim that the appellants were aggressor.

Learned counsel then contend that the case in hand has not been appreciated by the trial court in the right perspective especially when there are injuries on both the sides. From the side of the complainant including Dharma (since deceased) five persons have received injuries. Except injury No.3, which was on the left elbow joint of Tejbir Singh PW5 which was ultimately declared as grievous, all other injuries are simple in nature. One of the injuries on the person of Tejbir Singh is, however, incised wound which is on left iliac crest. Taking us through the medical evidence it is argued that from the side of the appellants, there was no dearth of injuries. Six persons, namely, Ram Kishan, Hawa Singh, Suresh (appellants), Roshni, Meshri (since acquitted) and juvenile Vijender have received as many as 22 injuries. Injury no.1 (stab wound) on the person of

Roshni (since acquitted) wife of Ram Kishan (appellant) was ultimately declared as dangerous to life. Lacerated wound on her head (injury No.2) has also been declared as grievous. Besides this, injury no.3 which is again a lacerated wound, is on a non-vital part i.e. skull. Ram Kishan has received as many as eight injuries out of which three injuries (injuries no.1, 2 & 3) are by blunt pointed weapon being punctured wound. Similarly, one of the injuries on the person of Meshri has been caused by a sharp edged weapon. The complainant side does not say a word about the injuries on the person of the accused in the initial statement Ex.PS which is recorded at the instance of Tejbir Singh. This material flaw goes deep into the root of the case and speaks volumes of the fact that the complainant side is suppressing the genesis of the fight. Developing his case, it is then submitted that when Tejbir Singh stepped into the witness box as PW5, he very cleverly made an attempt to explain the injuries on the person of the accused stating that in self-defence they had used their Lathis and the same had hit the accused. His brother had used Santa (an instrument used for driving the animals) which also hit some of the accused. Ami Singh, the other star witness who is injured in this occurrence explains the injuries on the person of the accused stating that he was armed with a Lathi and caused injuries to the accused to save himself. He then states that the complainant side caused injuries to the accused with whatever weapon they could get hold of. This

does not amount to explaining the aforesaid injuries on the person of the accused which are caused by different weapons and, therefore, there being no plausible explanation for the injuries on the person of the accused, this Court can comfortably infer that the complainant side is intentionally suppressing the genesis of the occurrence for a reason that they being the aggressor had opened the assault on appellants side when they were in their fields. According to the learned counsel, the defence set up by them in this eventuality would certainly assume importance.

It is then submitted that even in the impugned judgment, the learned trial Judge has accepted the factual position observing that large number of injuries are suffered by the accused including serious ones and also held that the accused acted in their self-defence but considering the injuries on the person of Dharma, proceeded to accept the prosecution version vis-a-vis the appellants, which approach according to learned counsel is not sustainable. In this regard our attention has been drawn to paras 15, 16 and 17 of the impugned judgment.

It is then contended that the investigation in this case is not fair right from the very outset and the police had lent a helping hand to the complainant side despite the fact that they were the aggressor. While drawing our attention to the statement of ASI Mohinder Lal (PW10) it is submitted that even after SI/SHO to Police

Station Urlana, Baljit Singh (PW11), had directed him (ASI Mohinder Lal) to record the statement of the injured/accused who was admitted in Civil Hospital, Panipat, their statements were not recorded. Ram Kishan and Roshni were referred to Medical College and Hospital, Rohtak and the police was aware of this fact, still no effort was made to record their statements. Both of them remained admitted in the hospital for a considerable period. The statements of other injured/ accused, who were discharged from the hospital, could also be recorded. This by itself shows that the investigating Agency has intentionally not recorded the statement of accused side who would have given the true picture of the occurrence. Our attention has also been drawn to the cross-examination of SI/SHO Baljit Singh who has categorically stated that he had come to know that accused party had sustained injuries and they were admitted and being treated in General Hospital, Panipat. From the aforesaid weakness in the investigation, learned counsel have made an attempt to develop their case that from the very beginning the investigating agency was favouring the complainant party may be for any reason.

Learned counsel then contend that in fact Dharma alias Dharam Singh had received a single injury on his head in this occurrence and the swelling of upper eyelid of left eyes (injury No.2) is apparently the result of seepage of blood from the skull. As per the case set up by the prosecution, Ram Kishan and Suresh, who were

armed with Lathi, had given one injury each on the head of Dharma whereas the third injury on the eye is attributed to Vijender. May be with regard to injury No.2, Dr. R.K. Khandpur (PW1) has not agreed with the suggestion put to him to the effect that injury No.2 was the proverbial black eye because of the injury No.1 sustained on the head but he agreed with the observations of Modi Medical Jurisprudence as is clear from the questions put to him in his cross-examination. Our attention has also been drawn to the evidence of Dr. Dhan Kumar PW3 who in his cross-examination has agreed with the Modi Jurisprudence and Medical Jurisprudence by Cox. With regard to injury No.1 this doctor has stated that the police had never asked from him about the result of two successive blows. In his cross-examination he states that even the slightest movement of the head of a person who has already received a blow on the head, would not enable the person giving the second blow to cause injury at exactly the same place, although aims at that very place. From the aforesaid medical evidence learned counsel wants to develop that in fact there was only one injury on the head which is attributed to two accused, namely, Ram Kishan and his son Suresh (the appellants herein) for oblique motive as Suresh was a young boy of about 20 years and the complainant side has involved him also. He according to the prosecution case has not given any injury to any one else. He himself got injured. Regarding the other injuries, it is submitted that there is

no evidence attributing to any of the accused. In the MLR there are three injuries whereas in the postmortem report four injuries are shown. Otherwise also there are minor injuries which do not fall in the zone of consideration.

On the basis of the aforesaid submissions learned counsel submit that in fact the complainant side was the aggressor who had first opened the assault on the appellants, caused several injuries to six persons including two ladies, namely, Roshni and Meshri (since acquitted) with different types of weapons and the appellants side in their right of self-defence also caused certain injuries to the complainant party and incidentally Dharma received one injury on his head, and ultimately died. All these facts when taken collectively, are sufficient to discard the case of the prosecution in its entirety and, therefore, all the three appellants (in Criminal Appeal No.636-DB of 2001) deserve acquittal. The State Appeal (No.674-DBA of 2002) against acquittal of Meshri, Roshni and Sheela and Criminal Revision (No.632 of 2002) also deserve to be dismissed, the learned counsel so submits.

Learned counsel then contend that even otherwise Section 302 IPC is not attracted in this case as there is only one injury on the head of the deceased and the same is attributed to two accused, namely, Ram Kishan and his son Suresh. The learned counsel submit that when the prosecution is not in a position to

establish the author of the main fatal injury, conviction under Section 302 IPC qua any one cannot be maintained. Therefore, Ram Kishan and Suresh can at the most liable to be convicted under Section 325 IPC as the injury on the head is caused by a blunt weapon resulting into fracture. Developing their arguments the learned counsel contend that in the initial statement recorded at the instance of Tejbir, it is alleged that both Ram Kishan and Suresh were armed with lathi and they had caused one injury each on the head of the deceased. Seat of injury is not described in the said statement. However, when Tejbir and Ami Singh stepped into witness-box, both have stated that Ram Kishan had given lathi blow to the deceased on his left parietal region. With regard to Suresh, the substantive statement is that he too had given a lathi blow on the head of the deceased but without specifying seat of injury. Both these witnesses were confronted with their earlier statements on this aspect. On the basis of the aforesaid evidence, the learned counsel submit that the complainant side had intentionally made an improvement to implicate Ram Kishan with the main injury knowing very well that it is a case of one injury only and the prosecution was not definite about the author of the said injury. Therefore, conviction under section 302/34 IPC is not sustainable. In this eventuality conviction of Hawa Singh with the aid of Section 34 IPC along with aforesaid two co-accused cannot be maintained.

Controverting the submissions advanced on behalf of the

appellants, Mr. Katyal submits that may be both the sides are injured in this case but from facts it is established that appellants side was aggressor who had the motive to open the assault on the complainant party. He then submits that the ladies have also actively participated in the commission of the offence as Meshri and Roshni have also received some injuries. They had formed an unlawful assembly to attack the complainant party and, therefore, each of its member is liable vicariously irrespective of the specific overt act attributed. In the case in hand, all the seven persons had opened the attack on the complainant party when they were crossing the fields in a Buggi and caused various injuries to them and, therefore, in the present set of circumstances, not only the appeal qua Ram Kishan and two others deserves to be dismissed, even Meshri, Roshni and Sheela are also liable to be convicted for Section 302 read with Section 149 IPC and for other offences as well with the aid of Section 149 IPC, besides the other offences for which they have been charged substantively.

Although we are not deciding the case in hand on the basis of the observation of the learned trial Court but being court of first appeal and after having re-scanned the entire evidence on record very minutely for arriving at the just conclusion of the case, we feel the necessity of reproducing the observation made by the trial court in para 16 of the impugned judgment. The same reads as under:-

"16. Now coming to the first plank of argument that

is whether the accused are entitled to the right of private defence. To come to the conclusion, the court has to assess the role of rival groups and to see as to which group was aggressor. It is not disputed that both the groups belong to same family and are close relatives and there was enmity between them on account of share in the land. Accused Ram Kishan and Hawa Singh were alleged to have been occupying some land belonging to their brother deceased Dharma in an unauthorized manner. The fight between the rival groups is not disputed. Out of the complainant party; deceased Dharma had received three injuries (copy of MLR Ex.PA). Tejbir had received 10 injuries (copy of MLR Ex.PB/2) Ranbir had received five injuries (copy of MLR Ex.PC) and Krishan had received five injuries (copy of MLR Ex.PD). Thus, the total number of injuries received by the complainant party were twenty eight. Injury on the person PW5 Tejbir was a fracture on the elbow and was said to be grievous. Out of the accused party; accused Roshni had received four injuries (copy of MLR Ex.PJ), Ram Kishan had received eight

injuries (copy of MLR Ex.PJ), Ram Kishan had received eight injuries (copy of MLR Ex.PK), Hawa Singh had received two injuries (copy of MLR Ex.PL), Suresh had received four injuries (copy of MLR Ex.PM, Bajinder had received two injuries (copy of MLR Ex.PN), Meshri had received two injuries (copy of MLR Ex.PQ). Thus, the total number of injuries received by the accused party were twenty four. Accused Roshni had also received perforated punctured wound in the abdomen which was stated to be dangerous to life, as stated by DW3 Dr. Kulwinder Singh Behl, who also proved the operation notes Ex.DF/1. It appears that injuries on both sides were more or less similar but lathi blows on the head of Dharma proved to be fatal. It is pertinent to note that deceased Dharma was an elderly person and was given two lathi blows, one by Ram Kishan and another by Suresh and during the process of falling down even accused Vijender gave a blow on the face of Dharma while the remaining accused engaged other members of the complainant party. Thus, it is clear that blows on the head of

deceased Dharma were repeated when there is nothing to show that Dharma had retaliated or had given any blow to any of the accused. It is thus clear that the accused exceeded the right of private defence and they were the aggressor in the fight and one can infer that accused had knowledge that by their act there is likelihood of causing death of deceased Dharma."

At the same time while acquitting Meshri, Roshni and Sheela, the learned trial Court in para 22 of the impugned judgment has observed as under:-

"22. Now coming to the role and participation of lady accused i.e. Meshri, Roshni and Sheila in the case. It is not disputed that no role to accused Sheila has been attributed in the entire prosecution evidence. The role of accused Roshni, as per the prosecution story that she had given a gandasi blow hitting PW Tejbir on his left buttock which should have naturally resulted into an incised wound but according to copy of medico legal report Ex.PB he received two injuries on the right thigh in the middle part. Further according to PW5 Tejbir, accused

Roshni gave a gandasi blow on the left lowest portion of the abdomen of his father Dharma while PW6 Ami Singh is silent regarding the role and injury inflicted by accused Roshni. Now coming to the role and injury inflicted by accused Meshri, as per prosecution story she had given a gandasi blow from its front side to PW Ranbir but none of the two eye witnesses PW5 Tejbir and PW6 Ami Singh have explained her role. On the other hand, PW6 Ami Singh is not sure regarding the injury given by accused Meshri and he has stated that he is not sure as to who caused injury to him. Thus, I am of the considered view that the role and extent of participation of all the three lady accused in the unlawful assembly, in prosecution of common object of all accused, as discussed above, is doubtful and is short of degree of proof required in criminal law to hold these accused culpable. They are accordingly given benefit of doubt and acquitted of the charges framed."

A plain reading of the aforesaid observation of learned trial Court, as referred to in para 16 of the impugned judgment makes it clear that right of private defence has been extended to the

accused but the view taken is that they exceeded the right of private defence being aggressor in the fight. The court further goes on to say that the accused had the knowledge that by their that act there is likelihood of causing death of deceased Dharma. In our view on the basis of aforesaid observation, the trial Court should not have legally convicted Ram Kishan, Hawa Singh and Suresh under Section 302 read with Section 34 IPC.

Another irregularity which has been committed by the learned trial Court on the face of it is that once three ladies were acquitted by the trial Court on the ground that their participation in the shape of unlawful assembly in prosecution of common object of all the accused is doubtful and is short of degree of proof required in criminal law and for that reason benefit of doubt was extended to them, conviction under Section 148 IPC qua remaining accused could not be maintained. Similarly, their conviction with the aid of Section 149 IPC is also not maintainable. We cannot eschew observing that this approach of the learned trial Judge is not correct.

The admitted position in the case in hand is that both the sides are very close relatives as Dharma @ Dharam Singh, since deceased, was real brother of Ram Kishan and Hawa Singh appellants. The case set up by the complainant is with regard to occupying of more land by the appellant side. When stepped into witness box, Tejbir has stated that after the partition, his uncles

(Ram Kishan and Hawa Singh) had forcibly occupied about 2½ killas of their land. Another fact which is evident from the evidence is that the father of Dharma, Ram Kishan and Hawa Singh had partitioned his land amongst his sons much prior to the present occurrence. Tejbir states that despite the partition, the revenue record was showing the joint possession of all the brothers. From all these facts we do not find it difficult to observe that some dispute was still going on between both the sides with regard to sharing of some piece of land for which a Panchayat was also convened on different occasions. May be Master Tara and Bir Singh, the independent persons with regard to the mediator of dispute have not stepped into witness box, still both the sides cannot get out of the fact that bad-blood was there between both the sides in this regard and the present occurrence is an outcome of the same.

Another fact which is very pertinent on the face of it is that the ladies from both the sides are also involved in the present occurrence as is clear from their medical evidence. From the side of complainant Krishna wife of Tejbir has received five injuries whereas from accused side Roshni and Meshri (since acquitted) have also received six injuries. The presence of ladies in the fields along with male persons is not unusual in the villages because they render all assistance in the fields. No doubt, Roshni and Meshri have been acquitted by the learned trial Court primarily on the ground that their

participation in the commission of offence is doubtful on the basis of the conflict between ocular and medical evidence, still from the injuries received by them one picture is very clear before us that they were very much present when this occurrence had ensued. This is otherwise the case of the appellants side as is clear from their statements recorded under Section 313 Cr.P.C.

Another admitted position before us is that both the sides have received injuries with different types of weapons almost in equal number as is clear from their medical evidence discussed herein above.

Another admitted position in this case is that place of occurrence is also admitted by both the sides i.e. Point 'A' as shown in rough site plan or scaled plan. We have seen the scaled plan Ex.PF. Point 'A' is in front of field of one Ram Chander son of Jhandu. On its North side field of Hawa Singh appellant is shown. At some distance on southern side tubewell of Ram Kishan appellant is shown. Fields of complainant side are not shown anywhere. Tejbir in his cross-examination has, however, stated that they had gone to cut the grass from a vacant land owned by them. The complainant side states that when they were going to fetch grass from their field and reached in front of the field of the appellants, they were waylaid by a tractor and then assaulted whereas the case set up by Ram Kishan appellant is that the complainant side had come to their fields and Dharma,

Tejbir, Ami Singh and others had attacked him and his wife and on their raising Lalkara, Bijender, Hawa Singh, Meshri came from the adjoining fields to save them and they were also given injuries.

Let us now examine the case of the prosecution on the aspect of non-explaining of injuries on the person of the accused. Tejbir in his initial statement Ex.PS, which is the basis of the registration of the case, does not say a word about the injuries on the person of the accused. He and his brother Ami Singh, however, when stepped into the witness box made an attempt to explain the injuries. Tejbir states that in self-defence they had used Lathis and the same had hit the accused. His brother had used Santa (the instrument used for driving the animal) in self-defence hitting some of the accused. This explanation on the face of it does not appeal to us. Six persons from the side of appellants have received many injuries. Some of the injuries are by sharp edged weapon. Tejbir is not giving a true account. Ami Singh also made an attempt to explain the injuries on the person of accused stating that he was armed with a Lathi and caused injuries to save themselves. He then states that they had caused injuries to the accused with whatever weapon they could get hold of. This in our view is again not a convincing explanation. The question whether the prosecution is obliged to explain injuries sustained by the accused in the same occurrence and whether failure of the prosecution to so explain would mean that the prosecution has

suppressed the truth and also the origin and genesis of the occurrence was referred to by a three Judge Bench of Hon'ble Apex Court in **Ram Sunder Yadav Vs. State of Bihar, 1998 (4) RCR (Criminal) 54** in which Their Lordships while referring to the other judgments of the Hon'ble Supreme Court rendered in **Jagdish vs. State of Rajasthan, (1979) 2 Supreme Court Cases 178** and **Hari Krishna Singh and others vs. State of Bihar, (1988) 2 Supreme Court Cases 95** wherein divergent views were expressed, observed that in other two judgments of three Judge Bench rendered in **Bhaba Nanda Sarma and others vs. State of Assam, (1974) 4 Supreme Court Cases 396** and **Vijayee Singh and others v. State of U.P., (1990) 3 Supreme Court Cases 190,** the questions are already answered holding that the prosecution is not obliged to explain the injuries on the person of the accused in all cases and in all circumstances. Their Lordships in **R.S. Yadav's case (supra)** observed in para 3 as under:-

> " 3. It has now been brought to our notice that earlier a three judge Bench of this Court had considered the above questions in **Bhaba Nanda Sarma and others v. State of Assam, (1974) 4 SCC 396** and held that the prosecution is not obliged to explain the injuries on the person of accused in all cases and in all circumstances

and, according to the learned Judges, it is not the law. The same question again came up for consideration before another three judge Bench of this Court in **Vijayee Singh and others v. State of U.P., (1990) 3 SCC 190** wherein it has been held as under:-

> "In Mohar Rai case, 1968 (3) SCR 525, it is made clear that failure of the prosecution to offer any explanation regarding the injuries found on the accused may show that the evidence related to the incident is not true or at any rate not wholly true. Likewise in Lakshmi Singh case, 1976 (4) SCC 394 also it is observed that any non-explanation of the injuries on the accused by the prosecution may affect the prosecution case. But such a non-explanation may assume great importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution. But where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood the mere fact that the injuries are not explained by the prosecution cannot by itself be a sole basis to

reject such evidence, and consequently the whole case."

From the aforesaid settled legal position it can be said that non explanation of injuries can assume importance as per the facts of each case and where the defence gives a version which competes on probability with that of prosecution, it may affect the case of the prosecution. But where the evidence is clear, cogent and the court can distinguish the truth from the falsehood, the mere fact that the injuries are not explained by the prosecution cannot by itself be a basis to reject the whole of the case of the prosecution.

We have examined the present case within the parameters of the aforesaid judgment and keeping in view the totality of the facts and circumstances especially the fact that both the sides have received injuries of the similar nature and the fact that constantly simmering tension due to disproportionate area of holdings in the land of common ancestor was there, both the sides had entered into arena of free fight causing injuries to either side. Therefore, even if the complainant side has not come up with the plausible explanation of the injuries on the person of the accused that fact by itself cannot be considered to be vital flaw as to discard the case of the prosecution in its totality for the acquittal of all and in this eventuality each of the accused has to be convicted on the basis of his individual part/ role in the occurrence.

On the basis of the aforesaid rationale, we first of all take the case of Meshri, Roshni and Sheela who have since been acquitted. Sheela is wife of Suresh. Tejbir admits in his cross-examination that Suresh was married about two years before the occurrence and Muklawa came about seven days before the occurrence. A suggestion is given to him that Muklawa ceremony had taken place on 23.7.1992 to which he denied. Even if the Muklawa came about seven days before the present occurrence, we can safely conclude that a young married girl whose Muklawa ceremony had taken place a week before the present occurrence, would not go to the fields. Her in-laws would certainly not allow her to join hands with them in agricultural pursuits at that early stage of her marriage. Even otherwise she has not received any injury in this occurrence and the observation of learned trial Court as depicted in para 22 of the impugned judgment is that no role has been attributed to her. The participation of Sheela is, thus, doubtful in this occurrence. We also agree with the observation of the learned trial Court with regard to the participation of Roshni and Meshri so far as causing of injuries are concerned. Both are shown to be armed with Gandasis. The role ascribed to Roshni is that she had given a Gandasi blow hitting Tejbir on his left buttock when he had bent upon Dharam Chand his father. In that eventuality the injury on the person of Tejbir should have been incised wound. Medical evidence shows it otherwise. PW5 Tejbir states that Roshni gave a

Gandasi blow on the left lower portion of the abdomen of his father Dharma while Ami Singh PW6 is silent about any injury attributed to her. Regarding Meshri also the learned trial Court has doubted her role and taking all these facts into consideration has extended benefit of doubt to them. We are of the view that even if, presence of Roshni and Meshri cannot be doubted at the place of occurrence for the reason that they have received injuries at the hands of complainant party so much so that Roshni had received some serious/grievous injuries but from the aforesaid facts it can comfortably be said that their active participation in the shape of causing injuries to the complainant side is not there and therefore, they deserve acquittal. Resultantly, the State Appeal deserves to be dismissed. So would be the position of Criminal Revision filed by Tejbir Singh complainant against Meshri and others.

Let us now examine the participation of Ram Kishan, Hawa Singh and Suresh. The very case set up by the prosecution and also evident from the substantive evidence on record is that Ram Kishan and Suresh, who were armed with Lathis, caused one Lathi each on the head of Dharma. So far as Ram Kishan appellant is concerned, PW Tejbir is very specific that he gave a Lathi blow on the left side of head of his father Dharma. About Suresh he is not specific and states that he gave another Lathi blow on the head of his father. Tejbir then states in his substantive statement that when his

father was in a state of falling down, accused Bijender (Juvenile) gave lathi blow hitting on his face. So far as Hawa Singh appellant is concerned, the part attributed to him is that he gave a Gandasi blow on the head of his brother Ami Singh. In this regard we feel the necessity of referring to relevant portion of the substantive statement of Tejbir Singh which reads thus:-

> "Ram Kishan exhorted his co-accused, named above, not to leave us un-harmed. Then Ram Kishan gave a lathi blow on the left side of the head of my father Dharma. Suresh accused gave another lathi blow on the head of my father Dharma. When my father was in the process of falling down, accused Birender gave lathi blow hitting his face. Then we tried to intervene and on this Smt. Roshni gave a gandasi blow on the left lowest portion of the abdomen. Others also attacked us with their respective weapons. Hawa Singh gave a gandasi blow on the head of my brother Ami Singh."

Ami Singh also corroborates the substantive statement of his brother Tejbir almost in the same manner. His substantive evidence is also reproduced as under:-

> "They attacked us and before that Ram Kishan had exhorted his co-accused, named above, that we should not be allowed to escape. Suresh gave a lathi blow on

the head of my father; Ram Kishan gave a lathi blow on the left side of the head of my father. When my father was in the process of falling down, accused Birender gave a lathi blow hitting on his face, nearing the eye. My father fell down from the buggi and we intervened to save him. Hawa Singh gave a gandasi blow, from the sharp side, on my head."

We would now be examining the substantive statement of aforesaid two witnesses in the light of medical evidence on record. Dr. R.K. Khandpur (PW1), who had initially examined all the injured of the complainant side, noticed three injuries on the person of Dharam Singh (since deceased). Injury No.1 is a lacerated wound measuring 4cm x 1cm, scalp deep, present on the left side of parietal region. Fresh blood was oozing out from the wound. Hair were metted with clotted blood. This very injury as per the substantive statement of two witnesses is attributed to Ram Kishan with a Lathi. Injury No.2 which is diffused swelling on upper lid of left eye is attributed to Vijender (Juvenile). Although the defence side has made an attempt to show that this injury is on account of seepage of blood towards the eye after the receipt of injury no.1 but we refrain from commenting on that aspect at this stage because any observation made herein can certainly prejudice the case of either side before the Juvenile Court where admittedly Vijender co-accused

is still facing trial. Injury No.3 as noticed by aforesaid doctor is on the left tooth of upper jaw. This injury is not attributed to anybody in the substantive statement. Therefore, this is again out of purview of our consideration.

We would also like to discuss the statement of Dr. Dhan Kumar PW3 who had conducted the autopsy on the dead body of Dharma. He has noticed four injuries. The extra injury noticed by him was a lacerated wound measuring 4 cm x 5 cm present on the outer aspect of left hip joint. As stated above, the complainant side had made an attempt to attribute one extra injury to Roshni on the left lower portion of the abdomen. It appears that the complainant side wanted to connect Roshni appellant with this injury No.4. At the cost of repetition we may observe here that even injury No.4 is out of zone of our consideration as acquittal of Roshni stands confirmed by us. Focussing primarily on injury No.1 which is attributed to Ram Kishan and his son Suresh by lathi, it is deposed by doctor of autopsy that during the investigation, the prosecution has not sought his opinion to the effect that injury no.1 on the dead body could have been the result of two successive blows. He, however, on the asking of the State counsel has stated in his examination-in-chief that possibility of injury No.1 being the result of two different blows by lathi falling on the same place one after the other, cannot be ruled out. In his cross-examination he states that he cannot say that even the

slightest movement of the head of the person who has already received a blow on the head, would not enable the person giving the second blow to cause injury exactly at the same place although aimed at that very place. He, however, is very categoric in his cross-examination that he has found only one injury on the head. One fact which is very relevant to note here is that in the examination-in-chief the State counsel had made it clear from the doctor of autopsy that injury No.1 on the person of the deceased, which is on the head, is not on the frontal region but on the left side of the head. May be the attempt made by the State counsel was to show that injury no.2 on the person of the deceased resulting into blackening of eye, was not on account of seepage of blood and it was an individual injury (allegedly caused by Bijender). We reproduce the relevant portion of examination-in-chief of Dr. Dhan Kumar (PW3):-

> "Injury No.1 on the person of the deceased, which is on the head, is not on the frontal region, but is on the left side of the head. I agree with the observations of Dr. Bernard Knight in H.W.V. Cox Medical Jurisprudence and toxicology at page 287, in the 6th edition of 1992 that a black eye may be caused in three different ways i.e.:-
>
> i) By direct trauma such as a punch in the eye;
>
> ii) blood gravitating downwards over the supra-orbital bridge from an injury on the frontal area of

the scalp; and

iii) blood entering the orbit from behind or above due to a crack in the walls of the orbit, must offer (wrongly mentioned as often) a fracture of the floor of the anterior fossa of the skull.

In view of the fact that injury No.1 on the head of the deceased is not on the frontal region, the possibility of black eye described by me as injury no.2 because of injury no.1, may not be there. In view of the fact that extensive haemotoma was observed on the upper lid of left eye and the fact that the black eye can also be possible by a direct trauma, the possibility of injury no.2 being the result of direct trauma is more, again said it may be even like that."

After noticing injury on the left side of the scalp, the doctor on dissection found that bone of the left side of the scalp had fractured into multiple pieces.

From the aforesaid medical evidence before us, we can now safely conclude that there is only one injury on the head of Dharma (since deceased).

The case of the prosecution on the other hand is that Ram Kishan and his son Suresh had caused one lathi blow each on the left side of the head of Dharma. Tejbir and Ami Singh in their

substantive evidence are corroborating each other so far as lathi blow attributed to Ram Kishan appellant is concerned. They state that he (Ram Kishan) had given a lathi blow on the left side of the head of the deceased. So far as his son Suresh is concerned, the complainant party is not specific and a faint attempt has been made to show that he too had given one injury on the head. No doubt, in the initial statement of Tejbir he had stated that Ram Kishan and Suresh had given one injury each on the head of Dharma without specifying the seat of the injury and was confronted with his aforesaid previous statement wherein he specifically depicts the seat of head injury (left side) attributing it to Ram Kishan as is clear from his cross-examination and the same being the factual position with regard to substantive statement of Ami Singh, the other eye-witness but in our view, the same is not that damaging so as to make the case of the prosecution doubtful about the author of only one injury on the head. Therefore, we are not inclined to accept the argument advanced by the learned counsel in this regard for the purposes of diluting the offence to section 325 IPC and fix the liability of Ram Kishan appellant only qua injury no.1 on the head of the deceased and exonerate his son (Suresh appellant).

Another fact which is evident from the evidence is that except the aforesaid one injury which is attributed to Suresh, no other specific injury has been attributed to him. A perusal of the statement

of Tejbir and Ami Singh goes to show that in the entire occurrence Suresh is shown to have caused the aforesaid solitary injury. No doubt if one reads the statement in between the lines, it is stated that other accused had also caused injuries but the same does not fix Suresh appellant with a specific role. Suresh has, however, received injuries in this case as is clear from medical evidence discussed herein above. But since we have come to a categoric finding that he has not caused injury on the head of Dharma deceased and otherwise also he has not caused any injury to any of the complainant and the fact that the present case is of a free fight as already observed by us for which individual liability is to be fastened, Suresh appellant cannot be convicted for any offence individually despite the fact that he himself has received injuries in this occurrence. It is settled legal position that in a case of free fight when from the evidence specific individual act qua each of the accused is not clear, he cannot be convicted. In order to strengthen our view, we rely upon a judgment of the Apex Court rendered in **Pundalik Mahadu Bhane & Ors. V. State of Maharashtra JT 1997 (7) S.C. 410**. Therefore, in our view, Suresh appellant deserves acquittal on all counts. Ordered so.

So far as Hawa Singh appellant is concerned, admittedly he has not caused any injury to Dharam Singh. We have already acquitted Suresh appellant. Even otherwise on the basis of the evidence before us and on the rationale of free fight, applicability of

Section 34 IPC has to be disturbed, conviction of Hawa Singh for the offence punishable under Section 302/34 IPC is not sustainable. We, accordingly, set aside the same and examine his case with regard to the other injury attributed to him.

Tejbir PW is specific about Hawa Singh appellant and states that he had given Gandasi blow to his brother Ami Singh from its reverse side. Ami Singh when stepped into the witness-box states that Hawa Singh had given a Gandasi blow from its sharp side on his head. With regard to seat of injury he was confronted with his earlier statement Ex.DB recorded by the police under Section 161 Cr.P.C. The relevant portion from his cross-examination is reproduced as under:-

> "I also told to the police that Hawa Singh inflicted a Gandasi blow on my head. (This part of the statement is confronted with Ex.DB where seat of injury has not been mentioned in respect of injury caused by Hawa Singh)."

MLR of Ami Singh indicates that he has received four injuries. Out of these four injuries two are lacerated wound and the other two injuries are in the shape of contusion and tenderness. This indicates that sharp side of the Gandasi is not used by Hawa Singh and his injury would fall within the mischief of Section 323 IPC only for which he is liable to be convicted and sentenced. Ordered

accordingly.

Let us now examine the case of Ram Kishan appellant with regard to the fatal blow attributed to him by a lathi. The admitted position is that he has also received injuries in this occurrence along with other injured. Certain injuries on his person are on vital part (skull) caused by blunt weapon. He has also received three punctured wounds, one of which is on the chest. In a case of free fight targeted or calculated injuries are never given and, therefore, a subtle line of distinction has to be drawn between the intention and the knowledge. Knowledge may be presumed from intent but intent cannot be inferred from knowledge. Each case has to be seen on its own facts. There cannot be any hard and fast rule to say that a single blow on a vital part would not fall within the definition of Section 300 and it should always fall within the ambit of Section 304 Part-I or 304 Part-II. The IPC it recognizes three degrees of culpable homicide; the gravest form is defined as murder. The second may be termed as culpable homicide of second degree falling within the mischief of Section 304 Part-I and culpable homicide of third degree would fall within the ambit of Section 304 Part-II. Their Lordships of Hon'ble Apex Court in a very recent judgment rendered in **Rajpal and others vs. State of Haryana 2003 (3) RCC 209** while drawing the distinction between Sections 299 and Section 300 IPC have given the broad guidelines to appreciate such type of situation.

Having regard to the facts of the case, especially the fact that Ram Kishan has also received injuries on his person, in our considered view, his liability for injury No.1 on the head of Dharma (since deceased) allegedly caused by a lathi has to be fastened within the mischief of Section 304 Part-II IPC only and not Section 302 IPC for which he already stands convicted. Since Ram Kishan appellant has not caused any other specific injury to the complainant side, his conviction under Section 325 read with Section 149 IPC and 323 read with Section 149 IPC has to be disturbed. Ordered accordingly.

We have also considered the case of the complainant with regard to compensation under Section 357 Cr.P.C. as a prayer has been made in Criminal Revision No.632 of 2002 in this regard. Since both the sides have received injuries in this occurrence almost of the same nature and one of the injuries has proved to be fatal, we do not deem it appropriate to grant compensation to the complainant side.

As a sequel to the aforesaid discussion, the finale now surfaces is that Criminal Appeal No.636-DB of 2001 is partly allowed, conviction of Ram Kishan, Hawa Singh and Suresh as recorded by the trial Court under Sections 302, 323, 325 read with Section 149 IPC and Section 148 IPC is hereby set-aside. Instead only Ram Kishan appellant now stands convicted under Section 304

Part-II IPC and is sentenced to undergo R.I. for six years and to pay a fine of Rs.2000/-, in default of payment of fine to further undergo R.I. for three months as recorded by the trial Court. Hawa Singh appellant stands sentenced to undergo rigorous imprisonment under section 323 IPC for three months only as already ordered by the trial court. Suresh appellant, however, stands acquitted of all the charges.

Criminal Appeal No.674-DBA of 2002 titled "State of Haryana against Meshri and others" and Criminal Revision No.632 of 2002 filed by Tejbir Singh complainant stand dismissed.

All quarters concerned be informed without any delay.

(Virender Singh)
Judge

(A.N. Jindal)
Judge

August 28, 2006
'dalbir/rana'

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Appeal No. 674-DBA of 2002

Date of decision : August 28,2006

State of Haryana

....Appellant

Versus

Meshri and others

....Respondents

Coram: **Hon'ble Mr. Justice Virender Singh**
Hon'ble Mr. Justice A.N. Jindal

Present: Mr. Sunil Katyal, Deputy Advocate General, Haryana.

Ms. Baljeet Mann and Mr. Vinod Ghai, Advocates,
for the respondents.

Virender Singh, J.

For detailed judgment, see Criminal Appeal No. 636-DB of 2001, Ram Kishan and others versus State of Haryana.

(Virender Singh)
Judge

(A.N. Jindal)
Judge

August 28, 2006
'dalbir/rana'

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Revision No. 632 of 2002

Date of decision : August 28,2006

Tejbir Singh

....Petitioner

Versus

Meshri and others

....Respondents

Coram: Hon'ble Mr. Justice Virender Singh
Hon'ble Mr. Justice A.N. Jindal

Present: None for the petitioner

Ms. Baljeet Mann and Mr. Vinod Ghai, Advocates, for the respondents.

Virender Singh, J.

For detailed judgment, see Criminal Appeal No. 636-DB of 2001, Ram Kishan and others versus State of Haryana.

(Virender Singh)
Judge

(A.N. Jindal)
Judge

August 28, 2006
'dalbir/rana'